IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE NINTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NOs.12434, 12436 & 12805 OF 2004

WRIT PETITION NO : 12434 of 2004

Between:

S. Surya Narayana S/o. Yedukondalu
R/o.Polluru Via Mothugudem Town
Chinthur Mandal, Khammam District.

..... PETITIONER

AND

1 The Divisional Forest Officer Flying Squad Division, Khammam Khammam District.
2 The Executive Engineer Civil (O&M) Division III
Mothugudem, Khammam District.
3 The Assistant Executive Engineer C.M. Sub Division, Mothugudem, Khammam District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of writ of mandamus declaring the action of the 1st respondent in issuing the proceedings P.O.R.No.33/252, dt.28.5.2004 in file No.71/OR/2004-05 dt.2.6.2004 including the orders of the 2nd respondent in Memo No.E.E/C (O&M)Dn.III/MG/Adm/1163/2004 dt.19.6.2004 directing the 3rd respondent to recover Rs.1,80,020/ from the petitioner bill is illegal and void and opposed to Article 14,19, and 21 of the Constitution of India and consequently to direct the 1st respondent to recover the amounts in question from the petitioner only under Revenue Recovery Act.

Counsel for the Petitioner : MR.MUMMANENI.SRINIVASA RAO

Counsel for the Respondents : GP FOR FORESTS

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In WRIT PETITION NO : 12436 of 2004

Between:

Vasamsetti Bala Valavardhi Rao, S/o Venkata Rathnam,
R/o Motugudem, Chinthur Mandal, Khammam District.

..... PETITIONER

AND

1 The Divisional Forest Officer, Flying Squad Division, Khammam, Khammam District.
2 The Executive Engineer, Civil (O&M) Division III,
Mothugudem, Khammam District.
3 The Assistant Executive Engineer, C.M. Sub Division, Mothugudem,
Khammam District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the 1st respondent in issuing the proceedings P.O.R.No. 32/252, dt. 28-5-2004 in file No. 71/OR/2004-05 dt. 2-6-204 including the orders of the 2nd respondent in Memo No. EE/C(O&M)D-III/MGM/Adm/ 1163/2004, dt. 19-6-2004 directing the 3rd respondent to recover Rs. 1,80,020/- from the petitioner bill is illegal and void and opposed to Article 14, 19 and 21 of the Constitution of India and consequently to direct the 1st respondent to recover the amounts in question from the petitioner only under Revenue Recovery Act.

Counsel for the Petitioner : MR. MUMMANENI.SRINIVASA RAO

Counsel for the Respondents : GP FOR FORESTS

In WRIT PETITION NO : 12805 of 2004

Between:

Anisetty Sriramachandra Murthy, s/o Pothuraju,
r/o Mothugudem Village, Chinthur Mandal, Khammam District.

..... PETITIONER

AND

1 The Divisional Forest Officer, Flying Squad Division, Khammam, Khammam District.
2 The Executive Engineer, Civil (O&M) Division III, Mothugudem, Khammam District.
3 The Assistant Executive Engineer, C.M.Sub Division, Mothugudem, Khammam District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of writ of mandamus declaring the action of the 1st respondent in issuing the proceedings P.O.R.no.31/252, dt.28-5-2004 in file No.71/OR/2004-05 dt.2-6-2004 including the orders of the 2nd respondent in Memo No.EE/C(O&M)Dn.III/MGM/Adm/1163/2004, dt.19-6-2004 directing the 3rd respondent to recover Rs.1,80,020/- from the petitioner bill is illegal and void and opposed to Article 14, 19 and 21 of the Constitution of India and consequently to direct the 1st respondent to recover the amounts in question from the petitioner only under Revenue Recovery Act.

Counsel for the Petitioner : MR. MUMMANENI.SRINIVASA RAO

Counsel for the Respondents : GP FOR FORESTS

The Court made the following common order :

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NOs.12434, 12436 & 12805 OF 2004

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COMMON ORDER :

Since common questions of fact and law arise for consideration, these three writ petitions are heard together and decided by this Common Order.

The writ petitioners claim to be the civil contractors who were entrusted with certain civil works by the A.P. Power Generation Corporation Limited for the purpose of carrying out repairs to the building of the A.P. Genco. The petitioners claim that 90% of the work was already completed and the bills submitted by them for the work executed were under process. While so, cases were registered against the petitioners for the offences under the provisions of the A.P. Forest Act, 1967 and A.P. Forest Produce Transit Rules, 1970 alleging that they have illegally cut and stored the forest produce in connection with the civil works they were awarded by the A.P. Genco. In pursuance thereof, the forest produce involved in the alleged offences was seized on 27-5-2004. However, the petitioners expressed their willingness to remit the compensation under the A.P. Forest Offence (Compounding and Prosecution) Rules, 1969 and to get the offences compounded. They submitted compounding statements in Form-D prescribed under Rule-5 of A.P. Forest Offences (Compounding and Prosecution) Rules, 1969 (for short, 'the Rules'). Accordingly the 1st respondent – Divisional Forest Officer passed separate orders dated 2-6-2004, in Form-E determining the compensation amount payable by the petitioners and stating that on payment of the said amounts the seized forest produce shall be released. It was also made clear that if the compensation is not

paid in full within 30 days, action to recover the same will be taken as if it were an arrear of land revenue. Though against the said order, an appeal lies to the Conservator of Forests, the petitioners did not choose to prefer any such appeal and the said orders of compounding have become final.

Now these writ petitions are filed aggrieved by the subsequent proceedings of the 2nd respondent – Executive Engineer of the A.P. Power Generation Corporation Limited, dated 19-6-2004, directing the third respondent - Assistant Executive Engineer to recover the penalty amount from the bills of the petitioners and to credit the same in favour of the 1st respondent.

The contention of the petitioners is that the impugned action of the 2nd respondent in directing the third respondent to deduct the compensation amount from the amounts payable to them for the civil works executed is without authority or power. It is also stated that whereas under the order of compounding dated 2-6-2004 the petitioners were directed to pay the compensation amount within 30 days, the 2nd respondent is not at all justified in issuing the impugned proceedings even before the expiry of 30 days granted by the 1st respondent. The contention is that even if the petitioners commit default in payment of compensation amount, the 1st respondent has to initiate proceedings under the Revenue Recovery Act, but there cannot be any direction to the 2nd respondent to deduct the same from the amounts payable to the petitioners by the A.P. Genco.

On behalf of the 1st respondent, a counter-affidavit has been filed stating that the petitioners themselves agreed for recovery of the compounding fee from the amount payable to them by the A.P. Genco. They have given their consent to that effect on 29-5-2004. It is also stated that since the petitioners have given their consent, the 1st respondent has referred the matter to the authorities of the A.P. Genco to arrange to recover the penalty amount from the petitioners and to credit the same in favour of the 1st respondent. It is also stated that since as per the particulars furnished in the compounding statement in Form-D, the petitioners do not possess any immovable properties, the recovery under the provisions of the Revenue Recovery Act is not

possible. Hence, the writ petitions are misconceived and are liable to be dismissed.

Heard the learned Counsel for both the parties and perused the material on record.

Under Section 59 of the A.P. Forest Act, 1967, the Forest Officers are empowered to accept the compensation from any person who committed any forest offence other than an offence under Section 52 or Section 55 and to compound the offence.

In the case on hand, it is not in dispute that in pursuance of the willingness expressed by the petitioners to compound the forest offences alleged against them, orders have been passed by the 1st respondent duly compounding the offences on payment of the amounts specified thereunder. The writ petitioners do not dispute the said fact. Admittedly they have allowed the said orders to become final. The learned Counsel for the petitioners across the bar submits that the writ petitioners are not questioning the orders of the 1st respondent dated 2-6-2004, but their grievance is only with regard to the procedure followed by the respondents to recover the amounts of compensation levied by the 1st respondent under the orders dated 2-6-2004.

It is true that the petitioners have expressed their willingness to have the offences compounded by giving written undertaking in Form-D of the A.P. Forest Offences (Compounding and Prosecution) Rules, 1969, specifically mentioning that in case they fail to remit the amount of compensation imposed, the same may be recovered as if it were an arrear of land revenue as provided under the A.P. Forest Act, 1967. That apart, the order passed by the 1st respondent in Form-E also mentions that if the compensation is not paid in full within 30 days from the date of receipt of the said notice, action to recover the same will be taken as if it were an arrear of land revenue. However, even before the expiry of 30 days mentioned in the order of the 1st respondent, the impugned proceedings were passed by the 2nd respondent to recover the amounts in question by deducting the amounts from the bills payable to the petitioners for the work executed by them. Though in the counter-affidavit filed by

the 1st respondent, it is stated that the petitioners have given their consent, dated 29-5-2004 to recover the same from the amount payable to them by the A.P. Genco, nothing has been placed before this Court to substantiate the same. However, the petitioners dispute the same and state that their signatures were obtained on blank papers by the officials of the Forest Department and the said signed papers might have been used to make out a case that they have given their consent for deduction of the compensation amount from the amounts payable to them by the A.P. Genco. In the circumstances, before initiating the impugned proceedings, the 1st respondent ought to have afforded an opportunity to the petitioners to explain as to why the amounts in question shall not be deducted from the amounts payable to them by the A.P. Genco. Since admittedly no such procedure has been followed, as rightly contended by the learned Counsel for the petitioners, the impugned proceedings are unsustainable.

Accordingly, the impugned proceedings dated 19-6-2004 are set aside and these Writ Petitions are disposed of leaving it open to the respondents to recover the amounts in question from the petitioners following the due procedure as prescribed under the A.P. Forest Offences (Compounding and Prosecution) Rules, 1969. No costs.

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June, 2005.

gbs

Note:- Office is directed to place a copy of
this common order in W.P.Nos.12436 and
12805 of 2004 after signatures of the
Hon'ble Judge.

(B/O)

gbs

To

1 The Divisional Forest Officer Flying Squad Division, Khammam Khammam District.
2 The Executive Engineer Civil (O&M) Division III
Mothugudem, Khammam District.
3 The Assistant Executive Engineer C.M. Sub Division, Mothugudem, Khammam District

4. Two CCs to G.P. for Forests, High Court of AP Bldgs, Hyderabad.

5. Two CD copies.